No. 88-334

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

JOHN S. LYTLE

Petitioner,

v.

HOUSEHOLD MANUFACTURING, INC.,
D/B/A SCHWITZER TURBOCHARGERS,

Respondent.

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED AUGUST 23, 1988
CERTIORARI GRANTED JULY 3, 1989

The following opinions, decisions, judgments and orders have been omitted in printing in this joint appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

TABLE OF CONTENTS

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
12-6-84	1	Complaint; summons issued and returned to plaintiffs' attorney for service.
12-26	2	Amendment to Complaint. C/S
1-4-85	3	Answer of Deft. C/S
1-9	5	Deft.'s Amended Answer. C/S
1-30	7	Defendant's Second Amended Answer. C/S
4-19	11	Deft. Household Manufacturing, Inc.'s Motion for Summary Judgment w/supporting memorandum of law. C/S.
4-19	12	Affidavit of Al T. Duquenne.
4-19	13	Affidavit of Larry E. Miller.
4-19	14	Affidavit of Judith B. Boone.
5-9	17	Pltf.'s Memorandum in Opposition to Deft.'s Motion for Summary Judgment w/supporting affidavits of John S. Lytle, Donald E. Rancourt, Charles R. Farnham, III, William E. Ferry and Marianne Daw. C/S.

5-17	19	Order that the Defendant's motion for summary judgment be and the same is hereby denied. Copies mailed to attorneys of record.
11-27	24	Pltf.'s Supplemental Complaint. C/S.
11-27	25	Deft.'s Answer to Supplemental Complaint. C/S.
2-26		Case called for trial before the Court. Hearing on deft.'s motion to dismiss pltf.'s Sec. 1981 claim - motion allowed; Court ordered that pltf.'s claim pursuant to Title VII will proceed and will be without the presence of a jury. Opening statements to the Court by counsel. Pltf.'s evidence (see exhibit and witness lists in file.) Court recessed until 9:00 AM, 2-27-86.
2-27		Case recalled for trial before the Court. Pltf.'s motion for reconsideration of order dismissing Sec. 1981 claim - motion denied. Continued pltf.'s evidence. Testimony of Dr. Ronald Caldwell - found to be an expert in the field of medicine w/a specialty in internal medicine. Pltf. rests. Deft.'s motion to dismiss as to the wrongful discharge - motion allowed; as to retaliation charge motion denied. Deft.'s evidence (see exhibit and witness lists in file). Deft. rests. Pltf.'s rebuttal evidence. Pltf. rests. Deft. renews motion to dismiss as the close of all evidence

		as to the retaliation claim - motion allowed. Court finds there was no discriminatory practices on the part of the deft. and dismisses this action.
3-12-86	30	Order that all claims against the deft. in this case are dismissed. Copies mailed to attorneys of record.
3-12	31	Judgment that the pltf. take nothing by reason of this action. Each party to bear their own costs. Copies mailed to attorneys of record. JS-6 issued. ORDER AND JUDGMENT DOCKET XXXV, NO. 189.
4-11	32	Pltf.'s Notice of Appeal.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
NORTH CAROLINA

ASHEVILLE DIVISION

[Caption Omitted]

COMPLAINT
Jury Trial Demanded

Filed Dec. 6, 1984

Plaintiff, John S. Lytle, complaining of the Defendant alleges as follows:

PARTIES, CAPACITY, JURISDICTION AND VENUE

1. Plaintiff, John S. Lytle, is an adult citizen of North Carolina and resides in Asheville, Buncombe County, North Carolina.

2. Defendant, Household Manufacturing, Inc. (hereinafter "Household") is a Delaware corporation having a principal place of business in Prospect Heights,

Illinois, domesticated in North Carolina and doing business in Asheville, North Carolina under the name of Schwitzer Turbochargers.

3. Jurisdiction of this Court is invoked pursuant to the provisions of Title 28 U.S.C. §1331 and 1343 and Title 42 U.S.C. §1981 and §2000e-5(f)(3).

4. This action seeks to redress the deprivation of civil rights and employment discrimination which resulted from acts which are prohibited under Title 42 U.S.C. §1981(3) and §2000e-2(a).

FACTS

5. Plaintiff, who is a black male, was hired by Defendant Household on January 5, 1981 as a machinist for Household's Schwitzer Turbochargers plant in Asheville, North Carolina.

6. In this capacity, the Plaintiff through his experience and skill was assigned to operate one of the

most complicated and physically demanding machines used in the manufacturing process of Schwitzer Turbochargers.

7. From January 5, 1981, the date of his hire, to August 11, 1983, Plaintiff was a dependable and productive employee for Household and had not committed any serious or repeated violations of any company rule or regulation.

8. In March, 1983, Plaintiff began taking courses at Asheville-Buncombe Technical College in an effort to obtain a degree in mechanical engineering which would enhance his job skills and his opportunity for promotion within Household. The class for these courses met during the evening hours after the normal work hours of the Plaintiff.

9. Throughout his employment by the Defendant Household, Plaintiff was aware that

Household hired and promoted white employees on a continuing basis into job positions for which Plaintiff was qualified but was never considered.

10. On Thursday, August 11, 1983, Plaintiff told his immediate supervisor, Lawrence Miller, that Plaintiff desired to be absent from work on Friday, August 12, 1983 so that he could see a doctor.

11. Lawrence Miller responded by telling the Plaintiff that he could take Friday as a vacation day, but that Plaintiff would have to work overtime hours which were scheduled on Saturday, August 13, 1983.

12. Plaintiff informed Lawrence Miller that he would be unable to work on Saturday, August 13, 1983, because he was physically exhausted and unfit to work any more that week.

13. Plaintiff completed his production requirement for August 11, 1983 and left Defendant

Household's facility believing that he had informed Lawrence Miller of his situation and had been granted an excused absence for the next few days.

14. On Monday, August 15, 1983, Plaintiff returned to work and had nearly completed his shift when he was called into the office of Al Duquenne, Employee Relations Manager and was informed that he was being discharged for failing to come to work on Friday, August 12, 1983 and Saturday, August 13, 1983.

15. Upon information and belief, there are white persons employed by Defendant Household in the Schwitzer Turbochargers plant in Asheville, North Carolina who have as many or more instances of unexcused absences as does the Plaintiff or who have committed more serious violations of the company's rules and regulations and who have not been discharged upon the initial offense as was the Plaintiff.

16. Upon information and belief, Lawrence Miller, Al Duquenne, and Lane Simpson, Defendant's Personnel Managers, met, conferred and agreed to terminate the employment of Plaintiff because of his race.

17. On August 23, 1983, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission in which he alleged that the Defendant had terminated his employment because of his race and has discriminated against Plaintiff and other blacks with respect to hiring, promotion, discharge, references, seniority, and terms and conditions of employment. A copy of this charge no. 045831543 is attached hereto as Exhibit A and is incorporated herein by reference.

18. On September 28, 1984, the Equal Employment Opportunity Commission issued a "Notice of

Right to Sue" at the request of Plaintiff. A copy of this Notice of Right to Sue is attached hereto as Exhibit B and is incorporated herein by reference. All procedural prerequisites for filing this law suit pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., have been met.

19. After his termination on August 15, 1983, Plaintiff sought comparable employment with other companies. Prospective employers who sought information pertaining to the job performance of Plaintiff from Defendant were denied this information. Defendant's officials and managers refused to provide this information in retaliation against Plaintiff for having filed a charge of discrimination with the Equal Employment Opportunity Commission.

20. As the result of the refusal of Defendant to provide information to prospective employers with

respect to his employment by Defendant, Plaintiff has been unable to obtain full time employment.

FIRST CLAIM FOR RELIEF

21. The acts of the Defendant have had and continue to have the effect of depriving Plaintiff of rights, privileges and immunities guaranteed to him by the Constitution and laws of the United States, and particularly his right to seek and obtain gainful employment, his right to be free from race discrimination with respect to the terms and conditions of his employment, including promotion and termination, and his right to petition the government to redress acts declared unlawful by Title VII of the Civil Rights Act of 1964.

22. The acts of Defendant have deprived Plaintiff from obtaining compensation which he would have earned but for the discriminatory acts of Defendant in an

amount which will be proven at trial to be at least $30,000.

23. The acts of Defendant were done wrongfully and maliciously, with bad motive and ill will toward Plaintiff, and with reckless disregard to the rights of Plaintiff. Plaintiff is therefore entitled to punitive damages in an amount in excess of $10,000.00.

SECOND CLAIM FOR RELIEF

24. The acts of Defendant, as alleged in the foregoing paragraphs, are in violation of the Equal Employment Opportunity Act, also known as Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq.

25. Said acts have deprived the Plaintiff of the opportunity to obtain compensation which he would have

earned but for the discriminatory acts of Defendant in an amount which will be proven at trial.

WHEREFORE, Plaintiff prays that:

1. He recover judgment for all damages suffered by him as a result of the acts of Defendant described herein;

2. He recover punitive damages in an amount in excess of $10,000.00;

3. An order be issued immediately reinstating Plaintiff to his former job or to a job position which Plaintiff would have held but for the discriminatory acts of Defendant;

4. An order be issued enjoining Defendant, its agents, successors, employees, attorneys and those acting in concert with them and at their direction from continuing or maintaining any policy or practice which discriminates against Plaintiff because of his race or

retaliates against Plaintiff for having opposed practices declared unlawful by Title VII of the Civil Rights Act of 1964;

5. Plaintiff recover his reasonable attorneys' fees;

6. Plaintiff recover his costs in this action; and

7. Plaintiff recover such further relief as the Court deems appropriate.

PLAINTIFF REQUESTS A JURY TRIAL OF ALL ISSUES TRIABLE HEREIN BY A JURY.

This the 6th day of December, 1984.

JAMES, McELROY & DIEHL, P.A.

(sgd.) Regan A. Miller

By:_____

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Attorneys for Plaintiff

VERIFICATION

[Omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

ASHEVILLE DIVISION

[Caption Omitted]

AMENDMENT TO COMPLAINT
Filed Dec. 26, 1984

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, Plaintiff, John S. Lytle, amends as a matter of right the Complaint filed in this action on December 6, 1984. Plaintiff amends the Complaint by adding a Third Claim for Relief which reads as follows:

THIRD CLAIM FOR RELIEF

26. Plaintiff repeats and realleges Paragraphs 1 through 25 of the Complaint as if more fully set forth herein.

27. As the result of the acts of Defendant as set forth herein, Plaintiff has suffered embarrassment,

damage to his reputation, emotional distress and mental suffering.

28. As the result of the foregoing, Plaintiff has sustained damages of at least $50,000.

Plaintiff also amends the Complaint by adding a paragraph 8 to the Prayer For Relief which reads as follows:

WHEREFORE, Plaintiff prays that:

8. He recover damages for emotional and mental suffering in the sum of at least $50,000.

Submitted this 26th day of December, 1984.

JAMES, McELROY & DIEHL, P.A.

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

ASHEVILLE DIVISION

[Caption omitted]

ANSWER
Filed Jan. 4, 1985

Defendant Household Manufacturing, Inc., answers as follows:

FOR A FIRST DEFENSE

1. The complaint fails to state a claim upon which relief can be granted.

FOR A SECOND DEFENSE

2. Defendant admits paragraph 1 of the complaint.

3. Defendant admits paragraph 2 of the complaint.

4. Defendant admits paragraph 3 of the complaint.

5. Defendant denies paragraph 4 of the complaint.

6. Defendant admits paragraph 5 of the complaint.

7. Defendant admits paragraph 6 of the complaint.

8. Defendant denies paragraph 7 of the complaint.

9. Defendant lacks sufficient information to admit or deny paragraph 8 of the complaint.

10. Defendant denies paragraph 9 of the complaint.

11. Defendant denies paragraph 10 of the complaint.

12. Defendant denies paragraph 11 of the complaint.

13. Defendant denies paragraph 12 of the complaint.

14. Defendant denies paragraph 13 of the complaint.

15. Defendant denies paragraph 14 of the complaint.

16. Defendant denies paragraph 15 of the complaint.

17. Defendant denies paragraph 16 of the complaint.

18. Defendant admits so much of paragraph 17 of the complaint as alleges that plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission on August 23, 1983, Charge No. 045831543, and that said charge is attached to the complaint as

Exhibit A. Defendant denies the remainder of paragraph 17.

19. Defendant admits so much of paragraph 18 of the complaint as alleges that a Notice of Right to Sue was issued by the Equal Employment Opportunity Commission on September 28, 1984, and that a copy of this Notice of Right to Sue is attached to the complaint. Defendant denies that all procedural prerequisites for filing this lawsuit have been met.

20. Defendant denies paragraph 19 of the complaint.

21. Defendant denies paragraph 20 of the complaint.

22. Defendant denies paragraph 21 of the complaint.

23. Defendant denies paragraph 22 of the complaint.

24. Defendant denies paragraph 23 of the complaint.

25. Defendant denies paragraph 24 of the complaint.

26. Defendant denies paragraph 25 of the complaint.

27. Defendant denies that plaintiff is entitled to the relief requested in paragraphs 1-7 of the prayer for relief or to any relief whatever in this case.

FOR A THIRD DEFENSE

28. Insofar as the plaintiff seeks to state a cause of action for retaliation in violation of Section 704 of the Civil Rights Act of 1964, the procedural prerequisites for bringing such an action have not been met.

FOR A FOURTH DEFENSE

29. Plaintiff has unsuccessfully litigated the issue of race discrimination in his discharge before the

Superior Court of North Carolina in Lytle v. Schwitzer Turbochargers and the Employment Security Commission of North Carolina, 84-CVS-1602 (September 10, 1984) and is, by virtue of that decision, precluded by the doctrines of collateral estoppel and/or res judicata from relitigating that issue in this case.

Dated this 2nd day of January, 1985.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK AND STEWART

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
NORTH CAROLINA
ASHEVILLE DIVISION

[Caption omitted]

AMENDED ANSWER
Filed Jan. 9, 1985

Defendant Household Manufacturing, Inc., answers as follows:

FOR A FIRST DEFENSE

1. The complaint fails to state a claim upon which relief can be granted.

FOR A SECOND DEFENSE

2. Defendant admits paragraph 1 of the complaint.

3. Defendant admits paragraph 2 of the complaint.

4. Defendant admits paragraph 3 of the complaint.

5. Defendant denies paragraph 4 of the complaint.

6. Defendant admits paragraph 5 of the complaint.

7. Defendant admits paragraph 6 of the complaint.

8. Defendant denies paragraph 7 of the complaint.

9. Defendant lacks sufficient information to admit or deny paragraph 8 of the complaint.

10. Defendant denies paragraph 9 of the complaint.

11. Defendant denies paragraph 10 of the complaint.

12. Defendant denies paragraph 11 of the complaint.

13. Defendant denies paragraph 12 of the complaint.

14. Defendant denies paragraph 13 of the complaint.

15. Defendant denies paragraph 14 of the complaint.

16. Defendant denies paragraph 15 of the complaint.

17. Defendant denies paragraph 16 of the complaint.

18. Defendant admits so much of paragraph 17 of the complaint as alleges that plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission on August 23, 1983, Charge No. 045831543, and that said charge is attached to the complaint as Exhibit A. Defendant denies the remainder of paragraph 17.

19. Defendant admits so much of paragraph 18 of the complaint as alleges that a Notice of Right to Sue was issued by the Equal Employment Opportunity Commission on September 28, 1984, and that a copy of this Notice of Right to Sue is attached to the complaint. Defendant denies that all procedural prerequisites for filing this lawsuit have been met.

20. Defendant denies paragraph 19 of the complaint.

21. Defendant denies paragraph 20 of the complaint.

22. Defendant denies paragraph 21 of the complaint.

23. Defendant denies paragraph 22 of the complaint.

24. Defendant denies paragraph 23 of the complaint.

25. Defendant denies paragraph 24 of the complaint.

26. Defendant denies paragraph 25 of the complaint.

27. Defendant denies paragraph 26 of the complaint.

28. Defendant denies paragraph 27 of the complaint.

29. Defendant denies paragraph 28 of the complaint.

30. Defendant denies that plaintiff is entitled to the relief requested in paragraphs 1-8 of the prayer for relief or to any relief whatever in this case.

FOR A THIRD DEFENSE

31. Insofar as the plaintiff seeks to state a cause of action for retaliation in violation of Section 704 of the

Civil Rights Act of 1964, the procedural prerequisites for bringing such an action have not been met.

FOR A FOURTH DEFENSE

32. Plaintiff has unsuccessfully litigated the issue of race discrimination in his discharge before the Superior Court of North Carolina in Lytle v. Schwitzer Turbochargers and the Employment Security Commission of North Carolina, 84-CVS-1602 (September 10, 1984) and is, by virtue of that decision, precluded by the doctrines of collateral estoppel and/or res judicata from relitigating that issue in this case.

Dated this 7th day of January, 1985.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

ASHEVILLE DIVISION

[Caption omitted]

SECOND AMENDED ANSWER
Filed Jan. 30, 1985

Defendant Household Manufacturing, Inc., answers as follows:

FOR A FIRST DEFENSE

1. The complaint fails to state a claim upon which relief can be granted.

FOR A SECOND DEFENSE

2. Defendant admits paragraph 1 of the complaint.

3. Defendant admits paragraph 2 of the complaint.

4. Defendant admits paragraph 3 of the complaint.

5. Defendant denies paragraph 4 of the complaint.

6. Defendant admits paragraph 5 of the complaint.

7. Defendant admits paragraph 6 of the complaint.

8. Defendant denies paragraph 7 of the complaint.

9. Defendant lacks sufficient information to admit or deny paragraph 8 of the complaint.

10. Defendant denies paragraph 9 of the complaint.

11. Defendant denies paragraph 10 of the complaint.

12. Defendant denies paragraph 11 of the complaint.

13. Defendant denies paragraph 12 of the complaint.

14. Defendant denies paragraph 13 of the complaint.

15. Defendant denies paragraph 14 of the complaint.

16. Defendant denies paragraph 15 of the complaint.

17. Defendant denies paragraph 16 of the complaint.

18. Defendant admits so much of paragraph 17 of the complaint as alleges that plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission on August 23, 1983, Charge No. 045831543, and that said charge is attached to the complaint as

Exhibit A. Defendant denies the remainder of paragraph 17.

19. Defendant admits so much of paragraph 18 of the complaint as alleges that a Notice of Right to Sue was issued by the Equal Employment Opportunity Commission on September 28, 1984, and that a copy of this Notice of Right to Sue is attached to the complaint. Defendant denies that all procedural prerequisites for filing this lawsuit have been met.

20. Defendant denies paragraph 19 of the complaint.

21. Defendant denies paragraph 20 of the complaint.

22. Defendant denies paragraph 21 of the complaint.

23. Defendant denies paragraph 22 of the complaint.

24. Defendant denies paragraph 23 of the complaint.

25. Defendant denies paragraph 24 of the complaint.

26. Defendant denies paragraph 25 of the complaint.

27. Defendant denies paragraph of 26 of the complaint.

28. Defendant denies paragraph 27 of the complaint.

29. Defendant denies paragraph 28 of the complaint.

30. Defendant denies that plaintiff is entitled to

the relief requested in paragraphs 1-8 of the prayer for relief or to any relief whatever in this case.

FOR A THIRD DEFENSE

31. Insofar as the plaintiff seeks to state a cause of action of retaliation in violation of Section 704 of the Civil Rights Act of 1964, the procedural prerequisites for bringing such an action have not been met.

FOR A FOURTH DEFENSE

32. Plaintiff has unsuccessfully litigated the issue of race discrimination in his discharge before the Superior Court of North Carolina in Lytle v. Schwitzer Turbochargers and the Employment Security Commission of North Carolina, 84-CVS-1602 (September 10, 1984) and is, by virtue of that decision, precluded by the

doctrines of collateral estoppel and/or res judicata from relitigating that issue in this case.

FOR A FIFTH DEFENSE

33. Insofar as plaintiff seeks to state a pendent claim for intentional infliction of emotional distress resulting from his termination, plaintiff's sole and exclusive remedy lies under the North Carolina Workers' Compensation Act.

Dated this 28th day of January, 1985.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK AND STEWART

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

[Caption omitted]

SUPPLEMENTAL COMPLAINT
Filed Nov. 27, 1984

Plaintiff supplements the Complaint in this action by adding a Fourth Claim for Relief which reads as follows:

FOURTH CLAIM FOR RELIEF

29. On December 4, 1984, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission in which he alleged that Defendant retaliated against him for filing a charge of discrimination by failing to provide prospective employers with information concerning his work history as an employee of Schwitzer Turbocharger. A copy of this

charge of discrimination is attached hereto as Exhibit C and is incorporated herein by reference.

30. On July 22, 1985, the Equal Employment Opportunity Commission issued a Notice of Right to Sue which was received by Plaintiff on or about July 26, 1985. A copy of this Notice of Right to Sue is attached hereto as Exhibit D and is incorporated herein by reference.

31. The Plaintiff has met all of the procedural prerequisites for bringing an action for retaliation pursuant to Title VII of the Civil Rights Act of 1964, as amended.

32. The acts of Defendant, as alleged in paragraph 19 and 20 of the Complaint, violated §704(a), 42 U.S.C. §2000(e)-3(a), of the Civil Rights Act of 1964. These acts deprived plaintiff of the opportunity of

obtaining employment with prospective employers and earning corresponding wages and benefits.

This the 30th day of September, 1985.

(sgd.) Regan A. Miller

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

[Caption omitted]

ANSWER TO
SUPPLEMENTAL COMPLAINT
Filed Nov. 27, 1985

Defendant hereby answers the plaintiff's supplemental complaint as follows:

34. The responses submitted in defendant's answer, amended answer and second amended answer are incorporated by reference as if fully set forth herein.

35. Defendant admits so much of paragraph 29 of the supplemental complaint as alleges that plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission on December 4, 1984, Charge No. 045850225, and that said charge is attached to the supplemental complaint as Exhibit C. Defendant denies the remainder of paragraph 29.

36. Defendant admits so much of paragraph 30 of the supplemental complaint as alleges that a Notice of Right to Sue was issued by the Equal Employment Opportunity Commission, but is without information or belief as to the date such Notice was received by plaintiff. Defendant admits that a copy of the Notice is attached to the supplemental complaint as Exhibit D.

36. Defendant denies the allegations in paragraph 31 of the supplemental complaint.

37. Defendant denies the allegations in paragraph 32 of the supplemental complaint.

38. To the extent that plaintiff seeks to state a claim under 42 U.S.C. §1981 for alleged discriminatory acts which are subject to Title VII, said claims must be dismissed unless there is an independent factual basis for the §1981 allegation(s).

39. Defendant denies all allegations in the complaint, amendment to the complaint and supplemental complaint not specifically admitted in defendant's answer, amended answer, second amended answer or the answer to the supplemental complaint.

Dated this 26th day of November, 1985.

Respectfully submitted,
OGLETREE, DEAKINS, NASH,
SMOAK AND STEWART

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DISTRICT COURT DECISION FROM THE BENCH
EXCERPTS FROM TRIAL TRANSCRIPT OF FEBRUARY 26-27, 1986

[Tr. 2-10:]

* * * *

THE COURT: This is the case of John S. Lytle versus Household Manufacturing, Inc., d/b/a Schwitzer Turbochargers. The first question the Court has is is this a jury case or a nonjury case?

MR. MILLER: Your Honor, this is a jury case. As we stated in our brief, both the retaliation issue and the discharge issue are cognizable under Section 1981, and we have cited cases in our brief, the Goff case, specifically with respect to the issue of retaliation, and the Johnson v. Railway Express case with respect to the Supreme Court decision saying that the remedies offered by Section 1981 simply augment the remedies offered by

Title VII and do not preclude bringing a case under 1981 and having a jury trial on those issues.

THE COURT: I see authority from some other circuits that says when you assert that one of the underlying facts are precisely the same as Title VII, 1981 claim, but the Title VII claim, which encompasses the 1981 claim, and that, therefore, it's the only remedy, and it's decided by the court without a jury. Do you have some Fourth Circuit authority on that subject?

MR. MILLER: Your Honor, I read that case. That's the Tafoya case I think you're talking about, when the judge out -- an honorable judge out in Colorado. I read that decision and, Your Honor, quite frankly, it goes against the Supreme Court's decision in Johnson v. Railway Express. That decision says that an individual has a cause of action for an employment discrimination under Section 1981 and can recover for that

discrimination damages, including compensatory damages, and punitive damages. You can't state a new claim for relief if it's employment discrimination, and clearly the Supreme Court was recognizing that employment discrimination claims are recognizable under 1981, as well as under Title VII, had said nothing about one precluding the other, and that's what essentially the Tafoya decision does. It says that if you allege that you lost your job because of race discrimination and that's it, and you file a Title VII claim, then Title VII preempts your remedies for an employment discrimination. Clearly the Supreme Court has said it does not. And, you know, I don't see how you can state a new grounds if it's employment discrimination. There's only one grounds: employment discrimination, race discrimination.

And I read that decision with interest, and it was pointed out to the judge that he was overturning some of

his prior decisions on the same issue in other cases where he had allowed a jury trial in a 1981 action which was appended to a Title VII action, and he simply says that, oh, I wasn't deciding the issues of whether one preempts the other. And he stated language from the Congressional Record which says that the relief and remedies offered by the Civil Rights statutes that were already on the books are not overturned or preempted by the new Title VII remedies and the procedure allowed under that.

In this particular case, you have that concern of whether or not Title VII, you should go through those administrative procedures and give the employer a chance to conciliate. Well, we did that, and we still brought both actions after the conciliation process ended. I don't think that there's any concern in this case as to

whether or not those administrative prerequisites have been followed.

So all I can say, Judge, is I can't figure out how you can allege a new cause of action or a new ground or separate grounds for employment discrimination when that's clearly the operative fact and distinguish that from the Title VII action. It's just not possible to do that. Additionally, what he seems to be saying is don't bring a Title VII action, just bring it under 1981, and then you don't have that problem. And if that's the case, then let's dismiss the Title VII action and go to the jury on the 1981 action.

THE COURT: As I recall the, at least, the popular reports of the legislative history at the time of this action, Title VII, it's the proponents of Title VII who would be opponents of jury trials in these cases, and the management forces are those who are saying it ought be

retained as a jury trial. You seem to have come full circle in this case.

MR. MILLER: We sure have, Your Honor. And I think the reason for that, Judge, is that there is a desire to provide -- by the Supreme Court to provide an employment discrimination victim with the remedies that are offered by the Civil Rights Statute of 1866 and to preserve those remedies.

There is clear indication in the Congressional Record that they didn't intend to overturn those remedies or make them obsolete.

THE COURT: What says the defense to this particular point?

MR. DENNARD: Your Honor, we, of course, raised this issue in our initial brief of issues in our trial brief. We would at this time move to dismiss the Section 1981 claim from the case. Because it alleges an alleged

violation of Section 1981, it can't be combined with a factually identical claim drawn under Title VII. This was, of course, the decision that was remedied by Tafoya. That Tafoya decision cited the Fifth Circuit decision as well as the Sixth Circuit decision and five separate district court decisions.

In addition, we placed two additional cases in your bench book that deal with the same questions, the Ramirez decision that's out of the Southern District of Texas, and this is what that court in this case says: Remedies for employment discrimination under 1981 are considered only if the plaintiff asserts claims on grounds different from those underlying the Title VII claims. And they -- he's -- the district court cites the Parson case, which is a Fifth Circuit case, and apparently the proposition so well settled in the Fifth Circuit, that in the Parson case they handled it in a footnote, and this is

what the footnote says: Remedies for employment discrimination under 42 U.S.C. 1981 are considered only if the plaintiffs assert claims on grounds different from those underlying the Title VII claims. And in this case, we have there's no separate claim. We have simply the same claims involved and simply two statutes set out in the Complaint.

THE COURT: What do you say to the Johnson decision?

MR. DENNARD: Well, the Johnson -- the way Tafoya handled that is that the Johnson does not negate that requirement. Johnson says there's a remedy for employment discrimination, specifically race discrimination, and in that case, in that situation, you would have a right to a jury trial. But it doesn't negate this requirement that the plaintiff establish an independent basis for the claim. That's what Tafoya says

in those four. And, of course, you know, they cited pretty good authority. I don't think we've been cited any authority at all contrary to that, other than just going back and seeing what Johnson itself says. Mr. Miller dealt with this in his supplemental brief, and I don't think he cited any authorities that were contrary to that.

THE COURT: Where in the Tafoya decision is Johnson dealt with?

MR. DENNARD: In footnote 4 it says, the quote that I have down is that Johnson does not negate the requirement that plaintiff establish an independent basis for his claim.

* * * *

MR. DENNARD: I don't think Johnson has anything to do with combining them both in one action and deciding that it's proper to do that even if there's no independent basis for the 1981 claim.

MR. MILLER: Well, Your Honor, if my recollection of the Johnson case is correct, that was exactly what was going on in that case. The individual had sued under 1981, and as I remember it, had failed to comply with the administrative prerequisites for a Title VII action. And the decision was whether or not he had to comply with the Title VII prerequisites before he could go into federal court under 1981, or whether he had to comply with Title VII, and that was it, and if he didn't, his action was dismissed. And the court said no, it's not dismissed. 1981 is a separate remedy, and if he files under 1981 for employment discrimination he has a cause of action.

MR. DENNARD: If that is true, Your Honor, we've got a lot -- two circuits and a lot of district court cases that are just plain out wrong.

THE COURT: It would appear from a very cursory reading of Johnson that the Title VII action was never filed as a lawsuit in that case, though he did make his commission approach, and more than two years later filed a lawsuit under 1981.

MR. MILLER: Right. And he couldn't file under Title VII because of the statutory filing limitations law.

THE COURT: I will find from the pleadings in this cause that there is no independent basis alleged in the 1981 action. I will conclude, based upon the reasoning of the Tafoya case, that Title VII provides exclusive remedy, and this case will be tried by the Court

without a jury, and the 1981 claim is dismissed. Your exception is noted for the record.

* * * *

MR. MILLER: Can I just ask a question?

THE COURT: Yes, sir.

MR. MILLER: Are you saying that an employment descrimination [sic] victim has no right to compensatory and punitive damages?

THE COURT: I am saying that in this case the Title VII remedy is exclusive remedy, since there is no independent basis for the 1981 action.

MR. MILLER: And let me ask the Court, how would you go about alleging a independent basis of his employment discrimination and that's it?

THE COURT: Well, counsel --

MR. MILLER: Additionally, Your Honor --

THE COURT: -- I have ruled that the 1981 case is dismissed.

* * * *

MR. MILLER: Was that both issues? That's all I wanted to know. Retaliation and --

THE COURT: Retaliation is also a claim remedial -- remedied under Title VII, so I think it would apply to both issues.

* * * *

[Tr. 258-259:] [THE COURT:] As to the discharge claim, I will make the following findings:

That the defendant is an employer who employed -- I don't recall the exact number of people, but I will make a finding that they employed a number of people for a number of hours in excess of the threshold set out with reference to Title VII cases;

I will further find that John S. Lytle was an employee of the defendant during the relevant period;

I will find that he is Black;

I will find that the company did have the attendance policy as set out in Exhibit 22, in the paragraphs headed "Excessive Absence" with the subheading "Excused Absence, Tardy, or Leaving Early," and "Unexcused Absence, Tardy, or Leaving Early;"

I will find that plaintiff has shown evidence of four white employees who violated the excused absence policy and were given warnings, and of one white employee who had six minutes, approximately six minutes of excessive unexcused absence, tardiness, or leaving early, and that he was given a warning;

I will find by plaintiff's own evidence plaintiff had excess unexcused absence of 9.8 hours, and that, with

reference to this unexcused absence, he did not follow the company policy of calling in;

I will find that the conduct on the part of the white employees is not substantially similar in seriousness to the conduct for which plaintiff was discharged.

I will conclude as a matter of law that the Court has jurisdiction of this matter, and that the plaintiff has established that he is a member of a protected category, and that he was discharged for violation of the company's policy, but I will conclude as a matter of law that he has not established a prima facie case, since he has not established that Blacks were treated differently, and in fact committed violations of the company's policy of sufficient seriousness;

And I will order that the claim as to the discharge be dismissed.

Again, I will deny the motion as to the claim of retaliation.

* * * *

[Tr. 299-301] THE COURT: Let me ask you this, counsel.

If the policy -- if the usual practice is to give letters, rather than just give the bare bones information, and he is being discriminated against because of retaliation, wouldn't it be the rule, rather than you just having one letter, that letters would have been issued in the past?

MR. MILLER: Well, Your Honor, I think that's evidence -- this is evidence that that's not the rule.

THE COURT: It would seem to me that the evidence here is not that Mr. Lytle was treated disparately, but rather that Joe Carpenter was treated disparately favorably.

MR. MILLER: Well, if you believe what they -

THE COURT: I don't --

MR. MILLER: -- say, Your Honor. If you believe that's what they say, Your Honor, then -- then -- then that's what it is, but, Your Honor --

THE COURT: Well, the only --

MR. MILLER: -- they state what the policy is, and then we've got a letter here which doesn't comply with the policy, which we say that wasn't the policy. The policy -- it's not written anywhere, Your Honor.

THE COURT: The only evidence to the contrary, or the evidence that that's the policy is one letter. And that doesn't make Mr. Lytle's treatment disparate; it makes Mr. Carpenter's treatment disparate, and I will at the close of all the evidence reaffirm my prior findings of fact, add the additional finding of fact that Mr. John S. Lytle did file the charge of

discrimination against Schwitzer Turbochargers with the EEOC on or about August 23, 1983;

The further finding of fact that when asked for references from prospective employes [sic], the defendant provided only the dates of employment and job title and, if requested, a description;

Further find as fact that that was the policy of the defendant;

Further find as fact that that was based upon the defendant's corporate understanding of it's legal right and to protect it from obligations that might be incurred by the release of negative information;

Further find as fact that defendant corporation, acting through Lane Simpson, did on one occasion grant a favorable reference letter to one terminated employee;

Further find as fact that the granting of that one favorable reference letter was done through inadvertence;

Further find as fact that there is no evidence of discrimination against John S. Lytle based upon his having made complaint to EEOC.

Conclude as a matter of law that there is no foundation in law for the retaliation claim. Add the conclusion of law that I made in the first conclusion, that I have jurisdiction of this action, and I will enter a judgment in favor of the defendant on all claims.

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